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MT LEGISLATIVE HISTORY

Chapter 596 1985

Bill H 859 S _____ Original bill & hist. ✓ C

H. Committee on Natural Res		S. Committee on Nat. Res.	
Hearing Date(s) _____	C	Hearing Date(s) _____	C
2/23	✓ C	3/25	✓ C
_____	C	_____	C
_____	C	_____	C
Date Out 2/23	✓ C	3/25	✓ C

Did this bill originate in an interim committee? ___ Yes ___ ~~No~~

Committee _____ Report _____

HOUSE BILL NO. 859

INTRODUCED BY RAMIREZ, HAND

IN THE HOUSE

February 16, 1985	Introduced and referred to Committee on Natural Resources.
February 25, 1985	Committee recommend bill do pass as amended. Report adopted.
	Bill printed and placed on members' desks.
February 26, 1985	Second reading, do pass.
	Considered correctly engrossed.
February 27, 1985	Third reading, passed.
	Transmitted to Senate.

IN THE SENATE

March 6, 1985	Introduced and referred to Committee on Natural Resources.
March 26, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 29, 1985	Second reading, concurred in.
March 30, 1985	Third reading, concurred in. Ayes, 49; Noes, 0.
	Returned to House with amendments.

IN THE HOUSE

March 30, 1985	Received from Senate.
April 8, 1985	Second reading, amendments concurred in.
	On motion, rules suspended and bill placed on third reading this day.
	Third reading, amendments concurred in.
	Sent to enrolling.
	Reported correctly enrolled.

HOUSE BILL NO. 859

INTRODUCED BY Ramirez Hand

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW IN CERTAIN CASES THE TRANSFER OF RESPONSIBILITY FOR THE CONDUCT OF HEARINGS FOR WATER APPROPRIATION PERMITS FROM THE DEPARTMENT OF NATURAL RESOURCES TO A DISTRICT COURT; AMENDING SECTIONS 3-7-101, 3-7-223, 3-7-224, 3-7-501, 3-7-502, 85-2-309, AND 85-2-402, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-7-101, MCA, is amended to read:

"3-7-101. Water divisions. To adjudicate existing water rights and to conduct hearings in cases certified under 85-2-309, water divisions are established as defined in 3-7-102. A water division shall be presided over by a water judge."

Section 2. Section 3-7-223, MCA, is amended to read:

"3-7-223. Duties of the chief water judge. The chief water judge shall:

(1) administer the adjudication of existing water rights by:

~~(1)~~(a) ~~coordinate~~ coordinating with the department of natural resources and conservation in compiling information submitted on water claim forms under Title 85, chapter 2, part 2, to assure that the information is expeditiously and properly compiled and transferred to the water judge in each water division;

~~(2)~~(b) ~~assure~~ assuring that the water judge in each water division moves without unreasonable delay to enter the required preliminary decree;

~~(3)~~(c) ~~assure~~ assuring that any contested or conflicting claims are tried and adjudicated as expeditiously as possible;

(2) administer hearings in cases certified to the district court under 85-2-309;

~~(4)~~(3) assign court personnel to divisions and duties as needed; and

~~(5)~~(4) request and secure the transfer of water judges between divisions as needed."

Section 3. Section 3-7-224, MCA, is amended to read:

"3-7-224. Jurisdiction of chief water judge. (1) The chief water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge has jurisdiction over cases certified to the district court under 85-2-309 and all matters relating to the determination of existing water rights within the boundaries of tne state of Montana.

(3) With regard to the ~~determination of existing water~~

~~rights~~ consideration of a matter within his jurisdiction, the chief water judge has the same powers as a district judge. He may issue such orders, on the motion of an interested party or on his own motion, as may reasonably be required to allow him to fulfill his responsibilities."

Section 4. Section 3-7-501, MCA, is amended to read:

"3-7-501. Jurisdiction. (1) The jurisdiction of each judicial district concerning the determination and interpretation of cases certified to the court under 85-2-309 concerning existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

(2) No water judge may preside over matters concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights beyond the boundaries specified in 3-7-102 for his division except as provided in 3-7-201 and 3-7-213.

(3) The water judge for each division shall exercise jurisdiction over all matters concerning cases certified to the court under 85-2-309 concerning the determination and interpretation of existing water rights within his division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division."

Section 5. Section 3-7-502, MCA, is amended to read:

"3-7-502. Jurisdictional disputes. Whenever a question arises concerning which water judge shall preside over adjudication of a matter concerning a case certified to the court under 85-2-309 or the determination and interpretation of existing water rights, the question shall be settled by the water judges involved."

Section 6. Section 85-2-309, MCA, is amended to read:

"85-2-309. Hearings on objections -- jurisdiction. (1) If the department determines that an objection to an application for a permit or change approval under 85-2-402 states a valid objection ~~to the issuance of the permit~~, it shall hold a public hearing on the objection within 60 days from the date set by the department for the filing of objections, after serving notice of the hearing by certified mail upon the applicant and the objector, unless the department certifies an issue to the district court for determination by a water judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) Upon request of a party, at any time prior to commencement and before the conclusion of a hearing as provided in subsection (1), the department shall certify to

the district court all factual and legal issues involving the adjudication or determination of the water rights of the parties to the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(b) Upon determination of the issues certified to it by the department, the court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322."

Section 7. Section 85-2-402, MCA, is amended to read:

"85-2-402. Changes in appropriation rights. (1) An appropriator may not change the place of diversion, place of use, purpose of use, or place of storage except as permitted under this section and approved by the department.

(2) The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change

shall be given in accordance with 85-2-307. If the department determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of 85-2-308(2), and hearings shall be held in accordance with 85-2-309.

(3) An appropriator of more than 15 cubic feet per second may not change the purpose of use of an appropriation right from an agricultural or irrigation use to an industrial use.

(4) The department may approve a change subject to such terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, including limitations on the time for completion of the change.

(5) If a change is not completed as approved by the department or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(6) Without obtaining prior approval from the

department, an appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands. The department shall approve the proposed change if it determines that the proposed change will not adversely affect the water rights of other persons. If the department determines that the proposed change might adversely affect the water rights of other persons, notice of the proposed change must be given in accordance with 85-2-307. If the department then determines that an objection filed by a person whose water rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections must meet the requirements of 85-2-308, and hearings must be held or the matter certified to the district court in accordance with 85-2-309.

(7) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(8) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section."

-End-

LC 0772/01

STANDING COMMITTEE REPORT

SENATE

MARCH 26 19 85

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 859

THIRD (FULLER) reading copy (BLUE color)

ALLOWS TRANSFER OF CERTAIN WATER USE PERMIT CASES TO THE DISTRICT COURT

respectfully report as follows: That HOUSE BILL No. 859

be amended as follows:

1. Page 5, line 6.
Following: "department"
Strike: "shall"
Insert: "may in its discretion"

AND, AS AMENDED
BE CONCURRED IN

~~XXXXX~~

~~XXXXXXXXX~~

Dorothy Eck

SENATOR DOROTHY ECK Chairman.

those counties deserve consideration, but that it should be achieved through the highway department's priority system, and not through legislative mandate.

Rep. Addy asked if it is true that the counties most negatively affected by present apportionment of highway reconstruction funds are the same counties that have a good tax base because of extractive industry. Ted Fletcher of Powder River County responded, saying that those industries do provide a substantial tax base, but since the counties in question are rural, they do not have the wide tax base enjoyed by urban areas.

Rep. Devlin closed by reminding the committee that HB 312 is simply a request that the state treat counties in the same manner as the federal government treats the state.

HOUSE BILL 859: Rep. Jack Ramirez, District 87, introduced HB 859, which he sponsored. Rep. Ramirez said the bill was drafted in response to problems arising from water hearings. Those hearings are now conducted through the department of natural resources, which appoints a hearings examiner to hear complicated water disputes. Often the hearings examiner is called upon to listen to and sort through complex legal questions, said Rep. Ramirez. He lauded the efforts of DNRC hearings examiners, but said that legal questions should be heard and argued in the district court, and not before a hearings examiner. Under HB 859, a water rights certification procedure would begin in DNRC, but if it appears that legal or factual issues are to be disputed, the issue will be transferred to the state water courts.

Duke Gilbert, a Dillon attorney, rose as a proponent of the bill. He said that since the Water Use Act of 1969 was enacted, he has attended many DRNC water hearings. These hearings, he said, can turn into "real cat and dog fights" over water use, and are often marred by arbitrary, non-technical rules. He too noted that DNRC hearings examiners are competent and professional, but they lack the legal ability to conduct a formal hearing, and to address complex legal issues.

Don McIntyre, attorney for the department of natural resources and conservation, said the authority to adjudicate water rights rests with the water courts. That is the finding of the Supreme Court, he said, and the department supports that finding.

There were no opponents to HB 859, and the floor was opened to questions from committee.

Rep. Raney asked Rep. Ramirez about the basic applicability of the bill, and was told that the department would have the option of referring any contested water issue to the district water courts for resolution.

Rep. Miles asked Rep. Ramirez if the bill would result in increased cost to the parties involved in water hearings. Rep. Ramirez responded that routine matters would still be handled administratively, with no additional cost to the parties. He added that contested cases are almost always fought by attorneys anyway, and that referring those cases to the water courts would not involve any greater expense than is now incurred.

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Rep. Ramirez closed by saying that by referring contested matters to the water courts, the department could be more certain that parties to water disputes would receive an adequate hearing. He said that providing a reliable forum for such disputes is especially necessary in view of the water marketing bill likely to be passed this session.

HOUSE BILL 891: HB 891 was introduced by Rep. Kelly Addy, District 94. Rep. Addy said HB 891 revises the state's eminent domain laws, and is the product of a consensus between landowners, industry, and public interest groups. He outlined the major changes provided in the bill, which include: a requirement that the state give 30-days notice to owners or possessors of affected property; a change in the forum for legal action to the district court; and a statement of minimum necessary interest.

Terry Murphy, representing the Montana Farmers' Union, said that group is in favor of the bill, with the amendments proposed by Rep. Addy.

Marg Green, representing the Montana Farm Bureau and Women Involved in Farm Economics, endorsed HB 891 on behalf of those groups.

Ward Shanahan, representing the Montana Mining Association, said that although HB 891 is no doubt beneficial to the landowner, it should be remembered that Montana law probably contains more safeguards for the landowner than most other states' eminent domain regulations. He said, however, that the MMA has no objection to the bill as presented by Rep. Addy. A copy of his testimony is attached as Exhibit 4.

Steve Pilcher, representing the state water quality bureau, said that agency supports HB 768 because it simplifies the subdivision process without frustrating the intent of regulation.

There were no opponents to the bill, and no questions from committee. Rep. Bradley closed by urging a do pass vote.

EXECUTIVE ACTION:

HOUSE BILL 768: Rep. Addy moved DO PASS on HB 768. Rep. Asay moved the amendments provided by Rep. Bradley, which were unanimously approved. Rep. Addy's motion was approved, with Rep. Garcia voting against it.

HOUSE BILL 791: Rep. Kadas moved DO PASS on HB 791. Rep. Asay moved the amendments suggested by Terry Carmody. Rep. Miles suggested that the committee discuss the definitions of subdivision as provided in HB 791 and HB 827. Rep. Kadas withdrew his motion so that the committee could consider the definitions and act on both bills at a later date.

HOUSE BILL 891: Rep. Addy moved DO PASS. Rep. Addy moved that the bill be amended to insert "owner or" on page 9, line 13, following "the." That amendment was unanimously approved. Rep. Kadas moved to amend the bill by inserting on page 9, line 14, following "shall," the language "be notified by the seller by certified mail and shall". That amendment was approved unanimously. Rep. Addy moved to strike section 5 in its entirety, which was approved unanimously. Rep. Addy moved to strike "and persons in possession" on page 1, lines 19-20, which was approved unanimously.

Rep. Addy then made a substitute motion of DO PASS AS AMENDED, which passed unanimously.

HOUSE BILL 859: Rep. O'Hara moved DO PASS. Rep. O'Hara then moved the amendments proposed by the department of natural resources and conservation, which were unanimously approved. The committee then unanimously approved Rep. O'Hara's DO PASS AS AMENDED motion.

HOUSE BILL 312: Rep. Raney moved DO NOT PASS on HB 312. Rep. Krueger made a substitute motion to table the bill. Rep. Iverson explained that John Shontz, a major proponent of the bill, had indicated that there were problems with the measure, and that it should be held until after transmittal. The committee unanimously voted to table HB 312.

DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date Feb. 23, 1985

NAME	PRESENT	ABSENT	EXCUSED
IVERSON, Dennis (Chairman)	X		
KADAS, Mike (Vice-Chairman)	X		
ADDY, Kelly	X		
ASAY, Tom	X		
COBB, John	X		
DRISCOLL, Jerry			X
GARCIA, Rodney	X		
GRADY, Edward	X		
HARP, John			X
JONES, Tom	X		
KRUEGER, Kurt	X		
MILES, Joan	X		
MOORE, Janet			X
O'HARA, Jesse	X		
PETERSON, Mary Lou	X		
RANEY, Bob	X		
REAM, Bob	X		
SMITH, Clyde	X		

CS-30

February 23 19 35

MR. SPEAKER:

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE Bill No. 859

FIRST reading copy (WHITE color)

AN ACT TO ALLOW IN CERTAIN CASES THE TRANSFER OF RESPONSIBILITY

FOR THE CONDUCT OF HEARINGS FOR WATER APPROPRIATION PERMITS
F
FROM THE DEPT. OF NATURAL RESOURCES TO A DISTRICT COURT

Respectfully report as follows: That HOUSE Bill No. 859

BE AMENDED AS FOLLOWS:

1) Title, line 8.
Following: "3-7-502,"
Insert: "AND"
Following: "85-2-309,"
Strike: " AND"

2) Title, line 9.
Strike: "85-2-402,"
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3) Page 2, line 10.
Strike: "administer"
Insert: "conduct"

DO PASS X

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

VISITORS' REGISTER

NATURAL RESOURCES COMMITTEE

BILL NO. HB 859 DATE 2/23/85

SPONSOR RAMIREZ

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Duke Gilbert	Dillon MT	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Senator Weeding questioned how people's concerns would be addressed. Mr. Zimmerman informed the committee the State would be able to participate in the licensing proceeding as they have always done. Mr. Zimmerman feels HB750 would not make a difference.

There being no further questions from the committee, Representative Bardanouve closed the hearing by stating the people of Montana want to be a part of the federal process.

There being no further questions from the committee, the hearing on HB750 was closed.

CONSIDERATION OF HB396: Representative Spaeth, sponsor of HB396, is introducing this bill at the request of the DNRC. The DNRC wants authority to determine when an application for water rights is not made in good faith. Representative Spaeth feels if the DNRC does not make this determination, it will have to be done by the courts.

PROPONENTS: Mr. Larry Fasbender, representing DNRC, submitted written testimony (Exhibit 4) in favor of HB396.

Mr. Russ Brown, representing Northern Plains Resource Council, supports HB396.

There being no further proponents and no opponents, the hearing was opened to questions from the committee.

Chairman Eck questioned what types of applications to appropriate water would be deemed speculative by the DNRC. Mr. Gary Fritz, DNRC, stated the DNRC would evaluate closely applications which want to take water out of state or tie up water for long periods of time. These applications are often not submitted in good faith.

Senator Gage inquired why the DNRC could not turn down any application submitted which would not "beneficially" use water. Representative Spaeth stated speculation adversely affects those who wish to use the water beneficially, but because there are proper procedures which the DNRC must adhere to, the DNRC often cannot limit speculation.

There being no further questions from the committee, the hearing on HB396 was closed.

CONSIDERATION OF HB859: Mr. Don MacIntyre introduced HB859 at the request of the sponsor, Representative Ramirez. HB859

would give the DNRC the ability to certify to the district courts certain matters dealing with adjudication of certain rights. HB859 provides that in a situation where the applicant or objector determines there are legal issues with the water right which need to be addressed, they may send that issue to the district court for a determination. HB859 would apply to any case pending before the DNRC at the present time, but would exempt cases which have already been submitted for a proposal for decision. Mr. MacIntyre submitted a proposed amendment (Exhibit 5) for the committee's consideration.

PROPONENTS: Mr. Ted Doney, representing the Montana Water Development Association, supports HB859 with the proposed amendment. Mr. Doney feels the proposed amendment is very important because without the amendment, every changed application proceeding would go to court.

Mr. Don MacIntyre, representing DNRC, supports HB859 and the proposed amendment.

There being no further proponents, no opponents and no questions from the committee, the hearing on HB859 was closed.

ACTION ON HB859: Senator Fuller moved the amendment proposed by Mr. MacIntyre to HB859 BE ADOPTED. The motion carried. Senator Fuller moved HB859 BE CONCURRED IN AS AMENDED. The motion carried.

ACTION ON HB638: Senator Halligan moved HB638 BE CONCURRED IN. The motion carried.

ACTION ON HB396: Senator Gage moved HB396 BE CONCURRED IN. The motion carried.

ACTION ON HB912: Mr. Thompson submitted a proposed amendment to HB912 for the committee's consideration (Exhibit 6). Senator Shaw moved the proposed amendment BE ADOPTED. The motion carried. Senator Shaw moved HB912 BE CONCURRED IN AS AMENDED. The motion carried.

FURTHER CONSIDERATION OF HJR25: Senator Mohar stated there was broad support for this bill, even though it is generally recognized there is a problem and the delegation has already been asked to resolve the issue. Senator Mohar feels passage of HJR25 will not add any incentive for resolving the wilderness area issue. Chairman Eck wondered if by not passing HJR25, the delegation may determine the legislature is not concerned about designating wilderness areas.

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Natural Resources COMMITTEE

48th LEGISLATIVE SESSION -- 1985 Date 3/25/85

NAME	PRESENT	ABSENT	EXCUSED
ECK, Dorothy (Chairman	✓		
HALLIGAN, Mike (Vice Chairman)	✓		
WHEELING, Cecil	✓		
MOHAR, John	✓		
DANIELS, M. K.	✓		
FULLER, David	✓		
CHRISTIAENS, Chris	✓		
TVEIT, Larry	✓		
GAGE, Delwyn	✓		
ANDERSON, John	✓		
SHAW, James	✓		
HARDING, Ethel	✓		

Each day attach to minutes.

AMENDMENT HB 859 (BLUE COPY)

1. Page 5, line 6
   Strike: "shall"
   Insert: "MAY IN ITS DISCRETION"

SENATE NATURAL RESOURCES COMMITTEE

MARCH 26 19 85

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 859

THIRD (FULLER) reading copy (BLUE color)

ALLOWS TRANSFER OF CERTAIN WATER USE PERMIT CASES TO THE DISTRICT COURT

Respectfully report as follows: That HOUSE BILL No. 859

be amended as follows:

1. Page 5, line 6.
Following: "department"
Strike: "shall"
Insert: "may in its discretion"

AND, AS AMENDED
BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

SENATOR DOROTHY ECK Chairman.